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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

20 Cr. 416 (JSR)

6 JOAO DJALMA PRESTES JUNIOR,

7 Defendant.

SENTENCE

8 -----x  
9 New York, N.Y.  
10 September 27, 2021  
11 2:00 p.m.

12 Before:

13 HON. JED S. RAKOFF,

14 District Judge

15 APPEARANCES

16 AUDREY STRAUSS  
17 United States Attorney for the  
18 Southern District of New York  
19 MICAH F. FERGENSON  
20 Assistant United States Attorney

21 MATTHEW J. KLUGER  
22 Attorney for Defendant

23 ALSO PRESENT: ADELIA DE ALMEDIA, Interpreter (Portuguese)

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1 (In open court)

2 (Case called)

3 DEPUTY CLERK: Will the parties please identify  
4 themselves for the record.

5 MR. FERGENSON: Good afternoon, your Honor.

6 Micah Fergenson for the government.

7 THE COURT: Good afternoon.

8 MR. KLUGER: Good afternoon, your Honor.

9 Matthew Kluger for Joao Prestes Junior.

10 THE COURT: Good afternoon.

11 Please be seated.

12 All right. We're here for sentence.

13 The first item is the guidelines. The probation  
14 office calculates the total offense level is 28; the Criminal  
15 History Category is I; and the guideline range, therefore, is  
16 78 to 97 months, which, of course, is not binding on the Court,  
17 but the Court will consider it.

18 Any objection to that calculation?

19 MR. FERGENSON: Not from the government.

20 MR. KLUGER: Not from the defense, Judge.

21 THE COURT: And the Court also agrees, and it will  
22 adopt in its entirety, the presentence report.23 Okay. Let me hear first from defense counsel, then  
24 from government counsel, then from the defendant, if he wishes  
25 to be heard.

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1 MR. KLUGER: Thank you, Judge.

2 Judge, the defense is requesting a variance of 30  
3 months in this case. We feel that -- or we respectfully submit  
4 to the Court that a sentence of 30 months is sufficient, but  
5 not greater than necessary in this case, given all of the  
6 3553(a) factors.

7 Let me first say that Mr. Prestes Junior accepts full  
8 responsibility for his actions in this case. He's pled guilty.  
9 He's allocuted. He's never minimized or done anything other  
10 than accepted his responsibility. But there are some 3553(a)  
11 factors that I want to bring to the Court's attention, most of  
12 which I've already raised in my submission --

13 THE COURT: Yes, and thank you for that submission.

14 MR. KLUGER: Thank you, Judge.

15 -- which was fairly substantial and included all sorts  
16 of letters and beautiful pictures.

17 THE COURT: Very helpful to the Court.

18 MR. KLUGER: Just a fraction, really, of what I  
19 received from his family. I mean, really beautiful, loving  
20 family. Obviously they can't be here. They're all in Brazil.  
21 I believe they're listening on the feed, though, to the  
22 sentencing with the assistance of an interpreter.

23 There were three main things I really wanted to  
24 discuss briefly this afternoon, Judge.

25 First is the offense conduct itself; second is a

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1 little bit of the allocation in the guidelines; and third is  
2 some of the additional 3553(a) factors that apply in this case.

3 With respect to the offense conduct itself -- I'm not  
4 getting into the nitty-gritty of the offense conduct. I know  
5 that is in the PSR. I'm sure that Mr. Fergenson will address  
6 those issues, but I do think that it's at least appropriate to  
7 look for a second at the nature of the victims in this case.

8 We're not talking about a -- and this isn't to  
9 minimize, but I think it's an important moral consideration.  
10 We're not talking about a mom-and-pop shop that lost all their  
11 life savings, a romance scheme where older people were  
12 defrauded of all their money. We're talking essentially about  
13 fairly good size -- in some cases, multimillion-dollar  
14 Brazilian businesses. All of these businesses are in Brazil.

15 And even the nature of the offense was that they lost  
16 what was believed to be fees that they were paying in  
17 furtherance of receiving loans in the tens of millions of  
18 dollars.

19 So we're talking about pretty good-size businesses.  
20 That certainly no one's -- they're certainly victims in the  
21 case, no one's disputing that, but I think there's a moral  
22 difference between the type of fraud we have in a case like  
23 this compared to, say, a similar case to the one I had a few  
24 weeks ago in front of Judge Wood where a romance scam or where  
25 people have literally lost. And I think it takes a different

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1 type of person to do that type of fraud.

2 I think it's also legitimate for the Court to consider  
3 that Mr. Prestes Junior is facing a host of other litigation  
4 related to essentially the same facts and circumstances that we  
5 have in this case. It's certainly not something that the Court  
6 is bound by or needs to really -- I mean, we're here today for  
7 this case, but Mr. Prestes Junior has been sued civilly both  
8 here and in Brazil. There's pending criminal prosecution or  
9 the possibility -- from what I understand, a very good  
10 possibility -- that he'll be prosecuted again when he gets back  
11 to Brazil. And I think that bodes in favor of a sentence that  
12 doesn't have to encompass the entire punishment in this case.

13 Even the victim impact statements, to a certain  
14 degree, were akin more to legal briefings than they were to  
15 actual descriptions of financial harm.

16 Certainly the companies, and rightfully so, are upset  
17 and angry that they lost money -- and they certainly have a  
18 right to be, and no one disputes that and no one disputes that  
19 Mr. Prestes Junior shouldn't get punished for it. The question  
20 here today is what's the sufficient punishment? What's enough  
21 punishment?

22 And the fact that there will be more punishment, both  
23 financial and criminal, I think bodes or leans or mitigates in  
24 favor of a sentence that doesn't perhaps need to punish  
25 Mr. Prestes Junior for everything in this particular proceeding

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1 that he's done.

2 Moving to the guidelines, Judge.

3 Obviously, I'm not going to lecture this Court on the  
4 application of the sentencing guidelines, and I don't need to,  
5 and I know that I don't need to. The guidelines are  
6 particularly excessive in fraud cases, and that holds true  
7 here. The guidelines are driven --

8 THE COURT: Well, I'll just cut you off on that.

9 I've gone on record many times saying that the  
10 guidelines are irrational, both in general, but in particular  
11 as applied to fraud cases where they look solely at the amount  
12 of actual or intended loss to the total exclusion, virtually,  
13 of any other important factor. So I don't -- you need not  
14 pursue that line further. You've already convinced me.

15 MR. KLUGER: And I appreciate that, Judge. I was --  
16 essentially, I wouldn't have gone much more deeper than that  
17 but to note that that's not certainly a unique position at this  
18 point.

19 I was looking at some of the statistics in this court,  
20 in the Southern District, from the Sentencing Commission data.  
21 And from 2018 to 2020, the average sentence for fraud cases in  
22 this district has been about 21 months, with a 12-month medium.  
23 And the downward variances on fraud cases have actually gone up  
24 from 55 percent in 2018, up to 71 percent in 2020. That's  
25 Sentencing Commission data.

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1           I don't necessarily know that many of the other  
2 learned judges in this building necessarily disagree with that  
3 position at this point -- and for good reason.

4           And so, Judge, then, given the fact that we don't need  
5 to spend much more time on the -- that's really the guidelines  
6 argument in this case, driven essentially by the loss amount,  
7 as your Honor said, with the exclusion of all the other 3553(a)  
8 factors, and I think there are some significant ones in this  
9 case.

10          And I would say some of it -- the top three that I'm  
11 going to address briefly would be the fact that Mr. Prestes  
12 Junior has no prior criminal convictions, which I'll address in  
13 a moment; the exceptionally strong and loving family support  
14 that he has; that he's the main strength of this family, the  
15 core of this family unit; and then I'm going to speak briefly  
16 about what I think is one of the more upsetting aspects of this  
17 case, which is the way that Mr. Prestes Junior has essentially  
18 lived during the past 13 months in the MCC, and the deplorable  
19 conditions that he's been living under.

20          With respect to the -- there's no question that  
21 Mr. Prestes Junior has no prior criminal record. There's this  
22 kind of noise in this case that keeps coming up by the case  
23 agent -- was raising it, in Mr. Fergenson's sentencing  
24 submission, that at some point there was some TV program in  
25 Brazil that may or -- that suggested that Mr. Prestes Junior

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1 was involved in some other type of fraudulent behavior possibly  
2 related to this case. It's unclear to me.

3 What is clear to me, what is a fact, is that there's  
4 no court proceedings with respect to this. So, I mean -- other  
5 than to just prejudice the defendant and to raise --

6 THE COURT: I'm not going to take any cognizance of  
7 that, so you can move on.

8 MR. KLUGER: I'll move on then, Judge.

9 The second -- again, we've talked briefly about the --  
10 I don't think I need to go over the different letters of  
11 support.

12 THE COURT: Although I do need to point out, so often  
13 I hear arguments about how -- particularly in a white-collar  
14 case, how the defendant has a loving and supportive family and  
15 he's been so wonderful to them and so forth. That's not  
16 irrelevant, but it is also relevant that when he chose to  
17 commit criminal activity, one of his victims was his family.

18 He knowingly undertook the risk that he would deprive  
19 them of his presence, of his support for whatever period of  
20 time the Court will choose to impose. So in that sense, he did  
21 a severe wrong to the people who loved him most.

22 MR. KLUGER: Your Honor is not only 100 percent  
23 correct, but I think in the letter, in a moment, that I'm going  
24 to read that Mr. Prestes Junior wrote to the Court, I think he  
25 addresses that very issue. I think he himself realizes that

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1 now more than anybody, and it's significant the Court raises  
2 the point as well, and it's also one of the last things I was  
3 going to address.

4 Mr. Prestes Junior, I think, from my speaking to him  
5 and from looking at -- he hasn't had an easy life. I know that  
6 probation kind of portrays him as some like, you know, on this  
7 pleasure cruise, driving around in his Maserati. Yes, he spent  
8 money to perpetuate the fraud, there's no doubt about that.  
9 But he's had a difficult life.

10 His father was murdered and a victim of crime. His  
11 mother passed away from -- everything I've heard from his  
12 family, from a medical error in 2014. The birth of his twin  
13 daughters was not without incident, as was raised in one of the  
14 letters to the Court. And his daughter -- I believe it was  
15 Fernanda -- apparently suffered from some particularly painful  
16 and devastating condition growing up. And I think that along  
17 the way -- and, again, this is my own -- I think Mr. Prestes  
18 Junior was fighting to keep this all together.

19 He is the brother of four sisters, and he's kind of  
20 the leader of the family. And to keep everyone together and  
21 support this family financially and morally, I do submit to the  
22 Court that he lost his way morally in terms of raising money to  
23 kind of keep -- and I don't know that at the time, like he does  
24 now, that he realized ultimately what he has done, which is  
25 essentially destroy his family to a certain extent, but he

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1 realizes that now, for sure.

2 And the last thing I will address -- and again,  
3 something that I'm sure I'm not the first attorney to raise  
4 before this Court, but it is particularly pertinent to  
5 Mr. Prestes Junior. He spent all of his time essentially at  
6 MCC in this case, which is a place that had conditions that  
7 were so bad they were essentially shut down.

8 And not only did he spend his entire sentence -- his  
9 entire pretrial confinement there, but of all the clients that  
10 I've had, his conditions seemed worse than all. And they were  
11 all bad, but he's the only one that literally had to have  
12 family call me, because he wasn't able to get off his cot  
13 because there were rats and sewage, no heat. I mean, I spoke  
14 to him, he was like a zombie. I couldn't even communicate  
15 about the case, to the point where I literally had to write a  
16 letter to the judge -- to the court. There was nothing more I  
17 could do. In twenty years, I've never done that. I mean, it's  
18 not like I write -- I mean, they were horrible, the conditions  
19 that he was in.

20 And to the Court -- and I know I'd be remiss if I  
21 didn't thank the Court, as well as Mr. Fergenson, for stepping  
22 in at that point and having Mr. Prestes Junior moved to a  
23 different area, which was clearly not good either, but it  
24 certainly wasn't him not being able to get off his bed where he  
25 was for 24 hours a day, because he didn't want to step in a

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1 foot of fetid sewage with rats in it. And it's just horrible.

2 But that certainly is not the way we're supposed to  
3 treat people, particularly people accused of crimes, but even  
4 people sentenced for crimes.

5 And certainly of all the 3553(a) factors, I wouldn't  
6 say that one is the most significant, but it's certainly one of  
7 the most disturbing, and I think that should -- there should be  
8 some accommodation or some consideration in the sentence for  
9 the conditions that he's been living under and serving his time  
10 under to that extent.

11 So at the end of the day, Judge, I raise the same  
12 question that I raised in my sentencing submission which is,  
13 you know, how much more punishment at this point is really  
14 necessary to achieve the purposes of sentencing?

15 There are angry victims, and they certainly have a  
16 right to their pound of flesh, so to speak. But we're not  
17 saying that Mr. Prestes Junior should get time served. He  
18 recognizes more than anyone the seriousness of the offense. We  
19 haven't asked for a time-served sentence. We haven't even  
20 asked for a two-year sentence.

21 THE COURT: No, I thought that was very realistic on  
22 your part.

23 MR. KLUGER: And we hope so, Judge, because we didn't  
24 just throw the numbers on the page. There was a lot discussion  
25 about it ahead of time. And to Mr. Prestes Junior's credit, he

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1 didn't want me to ask for a sentence -- he felt that that  
2 sentence was slightly high, and I understand that from his  
3 point of view, but I felt more -- taking everything into  
4 account that that sentence would be something that would be  
5 more fair to submit to the Court, and a sentence that was  
6 sufficient, but certainly not greater than necessary.

7 So for all those reasons, Judge, all of those various  
8 3553(a) factors, particularly the last ones that I addressed,  
9 we would ask the Court to impose a sentence not greater than 30  
10 months.

11 THE COURT: All right. Thank you very much.

12 Let me hear from the government.

13 MR. FERGENSON: Thank you, your Honor.

14 I will address a few points, but hope to be brief.

15 The first is just to acknowledge how significant this  
16 fraud was. It was a complex international scheme that stole  
17 over \$15 million. Just stole. There was no business to begin  
18 with. There was no business in the beginning. There was no  
19 business at the end. This was just a fraud. That's the first  
20 point.

21 The second point is how central Mr. Prestes Junior was  
22 to that fraud. The supposed financial entity, Some Korean  
23 Group, SKG, that Mr. Prestes Junior told victims he worked for  
24 that could facilitate these hundred-million-dollar loans. The  
25 domain name for [somekoreangroup.com](http://somekoreangroup.com) is registered all the way

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1 back in 2016, and it's registered under a name Peter Seller.  
2 That name is incorporated into an encrypted email address. But  
3 looking at chats with the website registrant, there is a user  
4 chat where the person says, I can't send emails. And they ask  
5 them, What email are you trying to send? And they're trying to  
6 send an email to a Hotmail account that incorporates the  
7 defendant's name. That's back in 2016.

8 Now this fraud, of course, its charge starts in 2018,  
9 but it shows he's central to this. They use these kind of  
10 flashy, false websites, these fake entities incorporated in  
11 different places around the world to do so.

12 More to the money on how central he is. The supposed  
13 escrow company, he's actually a signatory on those bank  
14 accounts. It had four bank accounts. He's the signatory on  
15 three of them.

16 And again with the money, the majority of the money  
17 that we have direct insight to because the transfers happened  
18 in the United States, there were at least four other  
19 co-conspirators in this case, majority of the victim money went  
20 to Mr. Prestes Junior, millions of dollars. That money got  
21 transferred overseas, facilitated through shell company  
22 transfers.

23 And a very important point I think, your Honor, which  
24 I noted in my sentencing submission is that, because of that,  
25 restitution and forfeiture is going to be a small drop in the

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1 bucket at best. These people are left with nothing, the  
2 victims.

3 And I want to turn back to the victims again, but  
4 briefly, sort of, on how central a role Mr. Prestes Junior  
5 played. He used an alias and he used the United States. So he  
6 came -- he's a Brazilian national. He came from Brazil here.  
7 He would actually have the victims fly into the United States,  
8 into Manhattan, and take them to a high-level suite in One  
9 World Trade at the supposed offices of SKG and try to dazzle  
10 and wow these victims who -- while they are not individuals,  
11 they were entities. He's not defrauding -- you know, this  
12 isn't Goldman Sachs he defrauded; they are family-run  
13 businesses.

14 In fact, one of the victims in this case that I've had  
15 a lot of communication with is literally a family team. Others  
16 are people who founded their companies themselves and were  
17 starting up in search of capital in a Brazilian economy that  
18 didn't have much to offer, very poor credit terms.

19 I want to just focus on that point that he used the  
20 United States. He used the imprimatur of this country, of its  
21 financial system, of this very borough's reputation  
22 internationally, of One World Trade, as a sort of symbol of  
23 American capitalism and legitimacy to effect the fraud.

24 And I know there was some talk about these -- this  
25 other earlier criminal proceedings in Brazil against Mr.

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1 Prestes Junior, as appears to be the case from --

2 THE COURT: I should have noted this when defense  
3 counsel raised that. I think that's an irrelevancy. I can't  
4 predict what's going to happen there, and I can well imagine  
5 that even if there is a proceeding there that the argument will  
6 be made there, Oh, he's already been punished enough here. So  
7 this involves speculation that I'm not going to engage in.

8 MR. FERGENSEN: That my was my entire point, your  
9 Honor. I suppose, maybe, just one last point -- and this is a  
10 risky point to make, I know, but with respect to the  
11 guidelines.

12 THE COURT: Yes. Go ahead.

13 I didn't bring any verbal arsenal with me, so go  
14 ahead; but I think you might have a hard row to hoe. I would  
15 have thought the argument you would be making is, guidelines or  
16 not, 15 million bucks is a lot to defraud people of. And, of  
17 course, the amount of loss is never an irrelevancy. It's a  
18 relevant factor.

19 What I find strange is that the guidelines take that  
20 factor and make it, in effect, 70 percent or so of the  
21 guideline calculation, as if the 100 other factors -- many of  
22 which we've already discussed here today, like what kind of  
23 person was this, what was his motivation, how are the victims  
24 treated, what was the sophistication of the scheme -- all these  
25 are either ignored by the guidelines or given short shrift by

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1 the guidelines, because for them, an arithmetic calculation of  
2 loss is the be-all and end-all.

3                   But if you want to defend that, please.

4                   MR. FERGENSEN: I don't mean to take quite all that  
5 on, but I would say that you could contrast a loss calculation,  
6 and, therefore, the guidelines calculation in a case like this  
7 would say -- a securities fraud case with a public company that  
8 results in a stock price drop --

9                   THE COURT: Well, that's a good point, but the  
10 point -- I think the point you're making is that, here, the  
11 money went significantly to the defendant, helped fund a --  
12 what you characterize, I think, not without a basis, a lavish  
13 lifestyle of the -- I heard defense counsel say quite  
14 eloquently about how the defendant was caring for many members  
15 of his family -- and that is to his credit and will be  
16 considered. I'm not quite sure that he could have done even a  
17 better job if he was driving a Ford instead of a Maserati, but  
18 I think that's your point. But I don't think it's a guideline  
19 point.

20                   MR. FERGENSEN: It's merely just -- that is correct,  
21 your Honor. It's merely that, I think -- well, it's not --

22                   THE COURT: I think the only other point you're  
23 making -- then I'll shut up and let you finish -- is that there  
24 are even more egregious cases of miscalculation under the  
25 guidelines than this one, and that's true. The absurdity of

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1 the guidelines knows no limit.

2 MR. FERGENSON: I would just phrase it in the positive  
3 in this case, which is that the loss calculation -- which is  
4 where the guidelines are completely teed off -- is actually not  
5 a horrible measure in this case of the defendant's greed and  
6 harm caused by the fraud.

7 THE COURT: Okay.

8 MR. FERGENSON: Thank you, your Honor.

9 THE COURT: Thank you very much.

10 Let me hear from the defendant, if he wishes to be  
11 heard.

12 MR. KLUGER: Judge, on this particular point, we  
13 had -- Mr. Prestes Junior had a letter translated into English,  
14 and ask that I read it in the record rather than read it in  
15 court.

16 THE COURT: That makes perfect sense. Sure.

17 MR. KLUGER: Before I do that, Judge, I hesitate -- I  
18 never want to open up a -- Mr. Fergenson actually just brings  
19 in a point that I hadn't. There are other co-defendants in  
20 this case, and I don't know necessarily how many there are or  
21 who they are or where they are.

22 THE COURT: No, that's true.

23 MR. KLUGER: But I don't necessarily know that it's  
24 fair to put the entire burden of this case on Mr. Prestes  
25 Junior. Yes, we're not saying he wasn't a significant -- you

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1 know, that he was a minor role. We're not claiming he had a  
2 minor role in this offense, but he doesn't have a role  
3 enhancement either.

4 While there is a lot of money involved in this case, I  
5 don't want the Court to be left with the impression that all of  
6 that money just landed in Mr. Prestes Junior's hands.

7 THE COURT: That's a fair point and well-taken.

8 MR. KLUGER: With respect -- and getting back again --  
9 because your Honor made this point earlier, but just to read  
10 Mr. Prestes Junior's letter to the Court, which we edited  
11 slightly for time.

12 Dear, your Honor. I thank you for allowing me to  
13 express myself to your Honor. Since June 8, 2020, I have spent  
14 many hours reflecting on my life in an effort to understand  
15 what has happened.

16 Over the years, I've made mistakes, but I've always  
17 tried to lead my life with dignity and respect. I apologize to  
18 the victims of my offense, and I'm sincerely sorry that anyone  
19 has been hurt by my actions.

20 I worry about the effect that this has had on my  
21 family; my wife, my daughters and sisters. I lost my parents  
22 at a young age, and my mother -- who was completely healthy --  
23 due to a medical error. I lost my ground and my safe haven.

24 Since my arrest, the lives of my loved ones have  
25 turned to hell as worry plagues them all the time. It's not

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1 easy for them to be many miles away. My wife has suffered the  
2 most consequences, as she takes care of our twin daughters,  
3 Amanda and Antonella alone, thousands of miles away, who were  
4 only five months old when I was arrested, and my other three  
5 daughters also suffer from my absence.

6 I worry about all of them constantly, and I am in  
7 terrible pain for not being able to help them, for missing them  
8 so much, and also missing having our family close together.

9 These past fifteen months have been very difficult.  
10 The only thing that keeps me alive is the concern to know that  
11 I have a wife, my five daughters and my sisters. I regret all  
12 the harm caused by my actions.

13 I know your Honor must weigh many factors in order to  
14 sentence me. I ask that you consider that there is much more  
15 to me than my case. I hope to return to Brazil and spend the  
16 rest of the time I have left trying to make up for the harm  
17 that I have caused to the victims of my crime and my family for  
18 the pain I have caused them.

19 Thank you, Joao Prestes Junior.

20 THE COURT: Thank you very much.

21 I've neglected to ask government counsel, I gather  
22 that although there's already a very significant forfeiture  
23 amount that's been agreed to in this case, that you want to  
24 defer for up to 90 days determining the restitution amount and  
25 who it should be paid to?

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1                   MR. FERGENSEN: Your Honor, I actually have signed  
2 copies of a consent order of restitution --

3                   THE COURT: Very good. Hand it up, please.

4                   MR. FERGENSEN: -- as well as an order of forfeiture.

5                   THE COURT: Excellent. You may hand that up.

6                   Thank you.

7                   All right. Let me ask defense counsel, before you and  
8 your client signed these two orders, did you go over all of  
9 this with your client?

10                  MR. KLUGER: We did, your Honor. We went over the  
11 restitution order, as well as the forfeiture order.

12                  THE COURT: So he understood what these orders  
13 required when he signed them?

14                  MR. KLUGER: He does, Judge. He appreciates what they  
15 say as well.

16                  THE COURT: All right. Very good.

17                  I thank counsel for both sides for their excellent  
18 presentations. Ordinarily, the sentence I would have imposed  
19 in this case would have been five years. This is because of  
20 the amount of the -- the size of the crime, the sophistication  
21 of the crime, the total lack of need to commit this crime in  
22 any moral sense or even really financial sense, and all the  
23 other factors that we have discussed in great length already,  
24 as well as all the factors under Section 3553(a) which the  
25 Court has considered. But I'm going to reduce it by one year

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1 to four years, 48 months.

2 And the main reason, not the only reason, but the main  
3 reason I'm reducing it is the terrible conditions that the  
4 defendant suffered while incarcerated in the local jail.

5 This is not the first case -- and I regret to say that  
6 I suspect it won't be the last -- where there has been brought  
7 to the Court's attention just how terrible conditions in both  
8 the MDC and, for that matter, the MCC, have become; and that's  
9 even without the additions of the pandemic, that's even without  
10 the additions of the electrical failures and the heat failures  
11 and things like that that occurred while this defendant was  
12 incarcerated.

13 We must never forget that while defendants have  
14 committed crimes that they all deserve to be punished for,  
15 they, like us, are human beings and still require to be treated  
16 in a civilized manner. And I think that was less than true in  
17 this defendant's case and, I'm afraid, in others.

18 I view the incarceration that he's already suffered as  
19 entitled to greater weight because it was, in effect, worse  
20 than anything the Court would have contemplated.

21 So the sentence of the Court is that the defendant is  
22 sentenced to 48 months in prison jointly on the two counts. No  
23 fine will be imposed because of the very substantial  
24 restitution that the Court is about to impose, however, there  
25 is a special mandatory assessment of \$200 that must be paid.

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1                   In terms of restitution, I have now signed both the  
2 consent order of restitution and the consent preliminary order  
3 of forfeiture, and I will give them to my court deputy in a  
4 minute to file. But the bottom line is that restitution must  
5 be paid, jointly and severally with other defendants, in the  
6 total amount of \$15,266,679.10.

7                   This is to be paid at the rate of 15 percent of the  
8 defendant's gross monthly income, beginning a month after his  
9 release from custody. There's also a judgment that these  
10 orders provide for that will be entered separately, but let me  
11 hand the order now to my court deputy.

12                  In terms of supervised release, normally, I would not  
13 impose that because the defendant is going to be deported, and  
14 that's the recommendation of the probation office. But let me  
15 just ask the government, did you want that to be imposed  
16 nevertheless because it might affect the restitution payments,  
17 or do you think that's just an exercise in paperwork, so to  
18 speak?

19                  MR. FERGENSON: The government doesn't feel a need for  
20 supervised release in this case, your Honor.

21                  THE COURT: To be frank, I think he's never going to  
22 be able to pay even more than a very small fraction of this  
23 amount, as the government has already assumed, so no supervised  
24 release will be imposed.

25                  Let me see if there's anything else we need to cover.

L9RBPRES

1 I think that's it, but let me ask counsel.

2 Before we talk about place of incarceration, anything  
3 else from the government?

4 MR. FERGENSON: Perhaps just noting that the  
5 forfeiture order is in the same amount of restitution, your  
6 Honor.

7 THE COURT: I'm sorry.

8 MR. FERGENSON: Just noting that the forfeiture amount  
9 is the same as the restitution.

10 THE COURT: Yes. Thank you very much. Same  
11 15-million-plus dollars.

12 So let me hear from the defense if they have a  
13 recommendation as to a place of incarceration.

14 MR. KLUGER: Judge, Mr. Prestes Junior has no real  
15 ties to the United States, so he's asked that the Court  
16 recommend that he be designated to a facility as near to the  
17 tristate area as possible.

18 THE COURT: Okay. I will certainly recommend it. I'm  
19 sure you told him this, I can only recommend it. I can't order  
20 it, but I will recommend it.

21 MR. KLUGER: Correct, Judge.

22 I said Pennsylvania as well. I don't know if the  
23 Court heard me, tristate area or Pennsylvania.

24 THE COURT: Okay. That's fine.

25 All right. Anything else from either counsel?

L9RBPRES

1 MR. FERGENSON: No.

2 Thank you, your Honor.

3 THE COURT: Then I need to advise the defendant of his  
4 right of appeal.

5 Mr. Prestes Junior, you have a right to appeal the  
6 sentence. Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: And if you can't afford counsel for any  
9 such appeal, the Court will appoint one for you free of charge.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Very good.

13 (Adjourned)

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